

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ALICIA LORENZ, *et al.*,

Plaintiffs,

v.

M. SHEPARD, *et al.*,

Defendants.

Case No. 1:23-cv-00604-JLT-EPG

ORDER VACATING JANUARY 9, 2024  
FINDINGS AND RECOMMENDATIONS  
(ECF NO. 8)

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING THAT THIS ACTION BE  
DISMISSED WITH PREJUDICE

(ECF Nos. 1, 8, 9).

OBJECTIONS, IF ANY, DUE WITHIN  
THIRTY DAYS

Plaintiffs Alicia Lorenz and Patrick Lorenz, Sr. (“Plaintiffs” or “Ms. Lorenz” and “Mr. Lorenz”) proceed *pro se* and *in forma pauperis* in this civil rights action filed on April 19, 2023. (ECF No. 1). Plaintiffs generally allege that their constitutional rights were violated when Lieutenant Shepard called Ms. Lorenz’s cell phone regarding Plaintiff’s son and said Plaintiffs’ son was hurt but did not give any details.

The Court screened Plaintiff’s complaint, concluding that Plaintiffs’ complaint failed to state any cognizable claims. (ECF No. 6). The Court directed Plaintiffs to either file an amended

1 complaint or written notice that Plaintiffs wished to stand on their complaint. (*Id.* at 16-17).

2 Plaintiffs failed to follow either course of action by the requisite deadline.

3 On January 9, 2024, the Court issued findings and recommendations that this action be  
4 dismissed, without prejudice, for failure to prosecute and failure to comply with a court order.  
5 (ECF No. 8). On January 29, 2024, Plaintiffs filed separate amended complaints. (ECF Nos. 9,  
6 10). Although untimely filed, the Court will construe Plaintiffs' amended complaints as a  
7 consolidated amended complaint, and upon review, will recommend that this action be dismissed  
8 with prejudice.

9 **I. SCREENING REQUIREMENT**

10 As Plaintiffs proceed *in forma pauperis*, the Court screens the complaint under 28 U.S.C.  
11 § 1915. (ECF No. 5). “Notwithstanding any filing fee, or any portion thereof, that may have been  
12 paid, the court shall dismiss the case at any time if the court determines that the action or appeal  
fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

13 A complaint is required to contain “a short and plain statement of the claim showing that  
14 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
15 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
16 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*  
17 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A plaintiff must set forth “sufficient  
18 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.*  
19 (quoting *Twombly*, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting  
20 this plausibility standard. *Id.* at 679. While a plaintiff’s allegations are taken as true, courts “are  
21 not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677,  
22 681 (9th Cir. 2009) (citation and internal quotation marks omitted). Additionally, a plaintiff’s  
23 legal conclusions are not accepted as true. *Iqbal*, 556 U.S. at 678.

24 Pleadings of *pro se* plaintiffs “must be held to less stringent standards than formal  
25 pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (holding that  
26 *pro se* complaints should continue to be liberally construed after *Iqbal*).  
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1       **II. SUMMARY OF PLAINTIFFS' CONSOLIDATED AMENDED COMPLAINT**

2           **A. Ms. Lorenz's Amended Complaint**

3       Ms. Lorenz's amended complaint identifies Lt. M. Shepard, a correctional officer, as  
4       Defendant. Mr. Lorenz alleges that Defendant unlawfully called her and told her of an incident  
5       concerning Plaintiffs' son. Defendant said Plaintiffs' son was hurt but did not give any details.  
6       According to Ms. Lorenz's amended complaint, the law states that Defendant cannot call unless  
7       an inmate has died or is on life support. The call resulted in extreme fear and consternation in  
8       both Plaintiffs. (ECF No. 9 at 5-6).

9           **B. Mr. Lorenz's Amended Complaint**

10       Mr. Lorenz's amended complaint identifies Lt. M. Shepard as Defendant. Mr. Lorenz  
11       alleges that Defendant illegally called him. Mr. Lorenz seeks \$50,000 in damages. (ECF No. 10 at  
12       5-6).

13       **III. ANALYSIS OF PLAINTIFFS' COMPLAINTS**

14           **A. Standards for Section 1983 Claims**

15       The Civil Rights Act under which this action was filed provides as follows:

16       Every person who, under color of any statute, ordinance, regulation, custom, or  
17       usage, of any State or Territory or the District of Columbia, subjects, or causes to  
18       be subjected, any citizen of the United States or other person within the  
jurisdiction thereof to the deprivation of any rights, privileges, or immunities  
secured by the Constitution and laws, shall be liable to the party injured in an  
action at law, suit in equity, or other proper proceeding for redress . . . .

19       42 U.S.C. § 1983. “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely  
20       provides ‘a method for vindicating federal rights elsewhere conferred.’” *Graham v. Connor*, 490  
U.S. 386, 393-94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)); *see also*  
*Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 618 (1979); *Hall v. City of Los Angeles*,  
697 F.3d 1059, 1068 (9<sup>th</sup> Cir. 2012); *Crowley v. Nevada*, 678 F.3d 730, 734 (9<sup>th</sup> Cir.  
2012); *Anderson v. Warner*, 451 F.3d 1063, 1067 (9<sup>th</sup> Cir. 2006).

25       To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted  
under color of state law, and (2) the defendant deprived him of rights secured by the Constitution  
or federal law. *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9<sup>th</sup> Cir. 2006); *see also*  
*Marsh v. County of San Diego*, 680 F.3d 1148, 1158 (9<sup>th</sup> Cir. 2012) (discussing “under color of

1 state law”). A person deprives another of a constitutional right, “within the meaning of § 1983, ‘if  
 2 he does an affirmative act, participates in another’s affirmative act, or omits to perform an act  
 3 which he is legally required to do that causes the deprivation of which complaint is  
 4 made.’” *Preschooler II v. Clark County Sch. Bd. Of Trs.*, 479 F.3d 1175, 1183 (9<sup>th</sup> Cir. 2007)  
 5 (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9<sup>th</sup> Cir. 1978)). “The requisite causal connection  
 6 may be established when an official sets in motion a ‘series of acts by others which the actor  
 7 knows or reasonably should know would cause others to inflict’ constitutional  
 8 harms.” *Preschooler II*, 479 F.3d at 1183 (quoting *Johnson*, 588 F.2d at 743). This standard of  
 9 causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.”  
 10 *Arnold v. Int'l Bus. Mach. Corp.*, 637 F.2d 1350, 1355 (9<sup>th</sup> Cir. 1981); *see also Harper v. City of*  
*Los Angeles*, 533 F.3d 1010, 1026 (9<sup>th</sup> Cir. 2008).

11       A plaintiff must demonstrate that each named defendant personally participated in the  
 12 deprivation of his rights. *Iqbal*, 556 U.S. at 676-77. In other words, there must be an actual  
 13 connection or link between the actions of the defendants and the deprivation alleged to have been  
 14 suffered by the plaintiff. *See Monell v. Dep’t of Soc. Servs. Of City of N.Y.*, 436 U.S. 658, 691,  
 15 695 (1978).

16                   **B. Rule 8 Requirement of Short and Plain Statement**

17       Plaintiffs’ consolidated amended complaint fails to comply with Rule 8(a).

18       As set forth above, Rule 8(a) of the Federal Rules of Civil Procedure requires a complaint  
 19 to contain “a short and plain statement of the claim showing that the pleader is entitled to relief.”  
 20 Fed. R. Civ. P. 8(a)(2). Although a complaint is not required to include detailed factual  
 21 allegations, it must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief  
 22 that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). It must  
 23 also contain “sufficient allegations of underlying facts to give fair notice and to enable the  
 24 opposing party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).  
 25 Moreover, Plaintiff must demonstrate that each named defendant personally participated in the  
 26 deprivation of his rights. *Iqbal*, 556 U.S. at 676-77.

27       Plaintiffs’ consolidated amended complaint is very brief and does not include any specific  
 28 factual allegations beyond the conclusory allegation that Defendant “illegally” called Plaintiffs.

1 Plaintiff does not point to any law or constitutional right. Plaintiffs' complaints fail to give notice  
 2 to Defendant what Plaintiff believes Defendant did that violated Plaintiffs' constitutional rights.  
 3 Accordingly, the Court finds that Plaintiffs' consolidated amended complaint is subject to  
 4 dismissal under Rule 8(a).<sup>1</sup>

### 5 C. Dismissal with Prejudice

6 "A complaint which fails to comply with rules 8(a) and 8(e) may be dismissed with  
 7 prejudice pursuant to rule 41(b)." *Nevijel v. N. Coast Life Ins. Co.*, 651 F.2d 671, 673 (9th Cir.  
 8 1981) (collecting cases) (footnote omitted). "Dismissal with prejudice of a complaint under Rule  
 9 41(b) is a harsh remedy. . . ." *McHenry v. Renne*, 84 F.3d 1172, 1178 (9th Cir. 1996). "The  
 10 district judge should first consider less drastic alternatives, but need not exhaust them all before  
 11 finally dismissing a case." *Id.* (citation and internal quotation marks omitted). "These less drastic  
 12 alternatives include allowing further amended complaints, allowing additional time, or insisting  
 13 that [Plaintiff] associate experienced counsel." *Nevijel*, 651 F.2d 671, 674 (9th Cir. 1981).

14 "The public's interest in expeditious resolution of litigation always favors dismissal." *Id.*  
 15 (quoting *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). Accordingly, this  
 16 first factor weighs in favor of dismissal.

17 As to the Court's need to manage its docket, "[t]he trial judge is in the best position to  
 18 determine whether the delay in a particular case interferes with docket management and the  
 19 public interest." *Id.* Here, Plaintiffs' failure to cure the deficiencies identified by the Court in the  
 20 first screening order, despite being afforded plenty of time to do so, is delaying this case and  
 21 interfering with docket management. Therefore, the second factor weighs in favor of dismissal.

22 Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently prejudicial in  
 23 and of itself to warrant dismissal." *Pagtalunan*, 291 F.3d at 642 (citing *Yourish*, 191 F.3d at 991).  
 24 However, "delay inherently increases the risk that witnesses' memories will fade and evidence  
 25 will become stale," *id.* at 643, and it is Plaintiffs' failure to comply with Rule 8(a), despite the

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26 <sup>1</sup> Although Plaintiffs' original complaint contained further allegations, the Court's screening order  
 27 specifically advised Plaintiffs "that an amended complaint supersedes the original complaint, *Lacey v.*  
*Maricopa County*, 693 F.3d. 896, 907 n.1 (9th Cir. 2012) (en banc), and must be complete in itself without  
 28 reference to the prior or superseded pleading, Local Rule 220. Therefore, in an amended complaint, as in  
 an original complaint, each claim and the involvement of each defendant must be sufficiently alleged."  
 (ECF No. 6 at 10).

1 Court specifically identifying the deficiencies of Plaintiffs' original complaint, that has delayed,  
2 and will continue to delay, resolution of this case. Therefore, the third factor weighs in favor of  
3 dismissal.

4 As for the availability of lesser sanctions, the Court previously warned Plaintiffs that  
5 failure to comply with Rule 8(a) could result in dismissal of their complaint,<sup>2</sup> granted Plaintiff  
6 leave to amend to cure the deficiencies identified by the Court, and gave Plaintiff thirty days to do  
7 so. However, Plaintiffs' consolidated amended complaint suffers the same material deficiencies  
8 identified in the first screening order. Thus, it appears that further leave to amend would be futile.  
9 Accordingly, the Court has considered less drastic sanctions, but sees no more appropriate option.

10 Finally, because public policy favors disposition on the merits, this factor weighs against  
11 dismissal. *Pagtalunan*, 291 F.3d at 643.

12 **IV. ORDER, CONCLUSION, AND RECOMMENDATIONS**

13 Based on the foregoing, IT IS ORDERED that the Court's findings and recommendations  
14 issued on January 9, 2024, (ECF No. 8), are vacated.

15 Additionally, the Court RECOMMENDS that:

- 16 1. This case be dismissed with prejudice; and  
17 2. The Clerk of Court be directed to close this case.

18 These findings and recommendations are submitted to the United States district judge  
19 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)  
20 days after being served with these findings and recommendations, Plaintiffs may file written  
21 objections with the court. Such a document should be captioned "Objections to Magistrate  
22 Judge's Findings and Recommendations." Plaintiffs are advised that failure to file objections  
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24 <sup>2</sup> In the first screening order the Court explained the deficiencies in Plaintiffs' original complaint. (ECF  
25 No. 6 at 5-10). The Court also provided Plaintiffs with relevant legal standards regarding Rule 8(a),  
26 Section 1983, supervisory liability, claims for cruel and unusual punishment under the Eighth  
27 Amendment, claims for unreasonable search and seizure under the Fourth Amendment, claims for  
28 retaliation under the First Amendment, and the doctrine of sovereign immunity. (*Id.* at 5-10). The Court  
further informed Plaintiffs that they could choose to stand on their complaint, in which case the Court  
would issue findings and recommendations to a district judge recommending dismissal of the action  
consistent with this order. (*Id.* at 11). The Court also warned Plaintiffs that "[f]ailure to comply with this  
order may result in the dismissal of this action." (*Id.*)

1 within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772  
2 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

3 IT IS SO ORDERED.  
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5 Dated: March 1, 2024

6 /s/ *Evan P. Gross*  
7 UNITED STATES MAGISTRATE JUDGE  
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